

EXHIBIT B

1 **TRANSCRIBED FROM DIGITAL RECORDING**

2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF ILLINOIS
4 EASTERN DIVISION

5 ROBERT SUNDIN,

6 Plaintiff,

7 -vs-

8 STELLAR RECOVERY, INC., and
9 DOES 1-10,

10 Defendants.

11 }

12 Case No. 13 C 1560

13 Chicago, Illinois
14 April 15, 2016
15 9:06 a.m.

16 AMANDA KNAPP-ELLIS, on behalf
17 of herself and all others
18 similarly situated, et al.,

19 -vs-

20 STELLAR RECOVERY, INC., a
21 Florida corporation,
22 Defendant.

23 }

24 Case No. 16 C 2187

25 TRANSCRIPT OF PROCEEDINGS
1 BEFORE THE HONORABLE SIDNEY I. SCHENKIER, MAGISTRATE JUDGE

2 APPEARANCES:

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16 **PLEASE NOTIFY OF INCORRECT SPEAKER IDENTIFICATION**

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18 PORTIONS UNINTELLIGIBLE AND INAUDIBLE

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1 (Proceedings heard in open court:)

2 THE CLERK: Case number 13 C 1560, Sundin versus
3 Stellar Recovery, et al., and 16 C 2187, Knapp-Ellis versus
4 Stellar Recovery, Inc., preliminary approval hearing.

5 MS. TERRELL: Good morning, your Honor, Beth Terrell,
6 Terrell Marshall Law Group on behalf of the plaintiffs and the
7 class.

8 MS. OBLAK: Good morning, your Honor. Katherine
9 Oblak, local counsel for the defendant.

10 THE COURT: And why don't we have counsel who's
11 participating by phone identify himself.

12 MR. HUTNICK: Ben Hutzick at Berman & Rabin for the
13 defendant, your Honor.

14 THE COURT: Good morning, everybody. We're here on
15 the preliminary approval motion which I've taken a look at.

16 Let me ask if there's anything that any of the
17 lawyers want to say to add to or elaborate on what's in the
18 motion?

19 MS. TERRELL: I don't think so, your Honor. I think
20 this is from our perspective the best settlement we could get
21 under the circumstances, and we would ask that it be approved
22 so we can move forward.

23 THE COURT: Let me -- I have a few questions.

24 One is with respect to the defendant's financial
25 condition. I think that there was some reference to me

1 getting some financial information *in camera*.

2 MS. TERRELL: I think that -- I think the statement
3 was if your Honor would like it, they will provide it.

4 THE COURT: All right. With respect to insurance,
5 tell me what was explored with respect to the availability of
6 insurance.

7 MS. TERRELL: Perhaps Mr. Hutnick would like to
8 respond to that?

9 MR. HUTNICK: Certainly.

10 Well, initially, the defendant hadn't turned in a
11 claim on it, although my understanding is that the carrier was
12 notified.

13 THE COURT: I'm sorry, was or was not?

14 MR. HUTNICK: Was notified.

15 THE COURT: Okay.

16 MR. HUTNICK: And there was some [inaudible] in the
17 settlement conference about whether the insurance company was
18 properly notified, but I think in the end, part of the issue
19 with the insurance was that there was a lapse in coverage at a
20 certain point, and so even if insurance had been gone through,
21 a substantial portion of the class wouldn't have been covered
22 by insurance.

23 THE COURT: All right. Do you have an idea what
24 the -- if there was coverage for the periods where there
25 wasn't a lapse what the policy limits were, anything like

1 that?

2 MR. HUTNICK: We have a copy of the policy, and I
3 believe it's actually a couple of different insurance
4 companies because of the length of the class period.

5 THE COURT: Yes.

6 MR. HUTNICK: Our understanding from the insurance
7 company is that they would have declined coverage for various
8 reasons, but if your Honor would like a copy of the insurance
9 policy with limits, we can provide that as well.

10 THE COURT: Actually, I'd like the lawyers who are
11 asking for the final -- or preliminary approval to actually
12 provide that information.

13 MS. TERRELL: Yes, your Honor, I believe --

14 THE COURT: What the policy term of coverage is, what
15 would have been covered and what their position was as to why
16 there wasn't coverage because the CEO's declaration is silent
17 on that.

18 MS. TERRELL: And my understanding was that the
19 representation on which we relied was that coverage had been
20 denied, not that it would be denied, so, yes, we would like to
21 look at that information.

22 THE COURT: Okay. So who's going to get it for me?

23 MR. HUTNICK: I can -- yeah, I have a copy of the
24 letter that the insurance company sent regarding the claim and
25 the policy -- a copy of the policy and everything.

1 THE COURT: Okay. All right. Then what I'd like you
2 to do is -- let me say this. My inclination, I have some --
3 some questions, some things I would like adjusted, but I would
4 give preliminary approval, but before final approval, I would
5 like to get that information.

6 MS. TERRELL: Well, your Honor, before we have
7 preliminary approval entered on a settlement that relies upon
8 not having adequate insurance proceeds, I'd like to see that
9 information and confirm it, so --

10 THE COURT: Okay.

11 MS. MILLER: Good morning, your Honor. Apologize for
12 being late. Cassandra Miller on behalf of plaintiff.

13 THE COURT: Okay. Of course, nobody stopped you from
14 getting it before today, did they, Ms. Terrell?

15 MS. TERRELL: We understood that -- no, that's true,
16 but we had understood coverage had been denied.

17 MR. HUTNICK: Yeah, and I apologize, but I believe we
18 actually sent a copy of the letter from the insurance company,
19 but there's been a lot of documents flying back and forth, so
20 it's possible they just got lost in the shuffle between
21 counsel.

22 MS. TERRELL: We'll look at that very carefully, your
23 Honor, to make sure nothing has been missed.

24 THE COURT: All right. Well, I'd like to know, get
25 the letter of denial, but also what the position was as to the

1 defendant as to what the coverage --

2 MS. TERRELL: Yes.

3 THE COURT: -- would have been.

4 MS. TERRELL: Yes.

5 THE COURT: All right. You know, this -- clearly the
6 presentation is that the defendant, absent any kind of very
7 clear and extensive coverage, would not have the financial
8 wherewithal to provide a meaningful amount of relief to the
9 very large number of putative class members if there was a
10 class certified and if liability was established.

11 MS. TERRELL: That's correct.

12 THE COURT: That much is clear, which is why the
13 parties pivoted to a 23(b)(2), and in looking at the motion,
14 there is certainly significant I'll call structural and
15 procedural change within the defendant that appears to be
16 quite positive and that would provide a number of safeguards
17 against repetition of what -- in the future of what the
18 plaintiffs say occurred in the past, and that relief is
19 certainly not something that comes without a cost to the
20 defendant because there are various costs that would be
21 incurred, and there would be a period of two years of
22 essentially monitoring with reports to the plaintiff class
23 counsel to verify that certain things were being done.

24 So all of that, it seems to me, is, you know,
25 significant benefit to the putative class.

1 I did have a question about some of the cost
2 calculations with respect to the relief. It wasn't clear to
3 me how much of the cost that is calculated is out-of-pocket
4 expenditures for personnel and for monitoring and so forth, as
5 opposed to a projection of lost revenue because of some of
6 these additional procedures and safeguards.

7 Can anybody shed some light on that?

8 MR. HUTNICK: I believe I can, your Honor.

9 THE COURT: Please, Mr. Hutnick.

10 MR. HUTNICK: Yes, I just have to pull up that
11 portion of the declaration and information.

12 MS. TERRELL: For our part, I would say that our
13 understanding is we were trying to value it based on actual
14 out-of-pocket costs to the defendant to comply, and those were
15 changes made to both their telephone dialing system, as well
16 as training and monitoring and additional safeguards put in
17 place for preventing calls to people that subsequently revoked
18 their consent to receive calls.

19 THE COURT: If you look at Paragraph 6 of
20 Mr. Schanck's declaration, he does say that some of the cost
21 is, it seems at least as I read it, attributable to a 25 to
22 30 percent reduction in overall production.

23 MR. HUTNICK: Uh-huh.

24 MS. TERRELL: Yeah, I think our understanding was,
25 though, that is separate from the actual out-of-pocket costs

1 associated with the new dialing procedures and training and
2 monitoring.

3 MR. HUTNICK: Correct.

4 MS. TERRELL: I think Mr. Hutnick can probably speak
5 to that.

6 THE COURT: Go ahead, Mr. Hutnick.

7 MR. HUTNICK: Sure. And I think the declaration shed
8 some light on the actual cost incurrence. Not counting
9 opportunity costs, the going-forward training cost for the
10 procedures they've implemented is approximately 15,000 per
11 year.

12 The scrubbing service that they use is \$1,200 per
13 month.

14 The recording storage, which they can use for review
15 of TCPA complaints and to ensure continued compliance is
16 currently another 15,000 per month, increasing to \$20,000 per
17 month moving forward just because of the volume of the storage
18 that's required for the recordings.

19 The implementation of increased quality monitoring on
20 top of the training, which was 15, is another \$45,000 roughly
21 per year.

22 THE COURT: All right. So during the two-year
23 period, my calculation, as you were just reading off the
24 numbers, is that's in excess of \$600,000.

25 MS. TERRELL: That's right.

1 MR. HUTNICK: Right.

2 THE COURT: Depending on that range for the storage,
3 you know, where it is in that 15,000 to 27,000 a month, but if
4 you shop at a \$20,000 number, that would be \$480,000 over two
5 years.

6 So it's over 600,000 in out-of-pocket expenditures
7 without regard to, again, any loss of production because of
8 the rigors of these procedures.

9 MR. HUTNICK: That's correct, your Honor, and
10 obviously the out-of-pocket -- I'm sorry, the cost for -- the
11 opportunity costs as far as production is concerned is a
12 little tougher to gauge because a lot of different things can
13 affect the bottom-line numbers, but their best estimates are
14 25 to 30 percent.

15 THE COURT: So, but I would say that if we're looking
16 at a cost to the defendant from lower production, to the
17 extent the lower production is because it's not as productive
18 if it's not doing things that violate the law, that's not
19 really a benefit.

20 MR. HUTNICK: Certainly, your Honor.

21 THE COURT: Or I should say that's not a detriment to
22 the defendant that we would recognize.

23 To the extent that lower production is because people
24 have to take more time to do things, and so instead of calling
25 X number of people a day, you can only call Y people a day,

1 you know, and assuming all the calls were appropriate, that
2 certainly is a loss of production, and that is a cost to
3 defendant.

4 But I wanted to have this discussion because to make
5 the point that this is not simply a settlement where the
6 defendant agrees to pay the three class representatives a
7 certain amount of money, pay class counsel a certain amount of
8 money, and then basically gets off scot-free.

9 The defendant is actually doing meaningful things
10 within its organization in terms of its structures, has
11 out-of-pocket costs and perhaps production costs as well,
12 which I think is significant in terms of the overall
13 reasonableness of the settlement.

14 Since I referenced the class representatives and
15 class counsel, why don't we talk about those numbers for a
16 minute. As I understood the petition, the amount of the award
17 or whether there is an award to the named plaintiff is not
18 something on which settlement turns.

19 MS. TERRELL: That's correct, your Honor.

20 THE COURT: All right. It seems to me that the
21 numbers of 10,000 for each person are extremely high when I
22 take into account a settlement where -- I understand that the
23 class is not waiving monetary claims, but they don't get any
24 money.

25 And so certainly these three people did something

1 that no other class members did, they put their names on a
2 complaint. But other than Sundin, who was deposed, I don't
3 know what else they did. And I know it says that they did
4 this at risk. I don't know what the risk is. This isn't like
5 an employment case, where someone has the courage to file a
6 complaint against the employer. This is a little bit
7 different.

8 Did any of the other defendant -- I'm sorry --
9 plaintiffs other than Sundin sit for deposition?

10 MS. TERRELL: No, your Honor.

11 MS. MILLER: No. Sundin was the only one that was
12 deposed, but we did complete a significant amount of
13 discovery, and we were close to the end of discovery by the
14 time we sat down to settle. So there was written discovery
15 which was prepared and exchanged and participation in terms of
16 providing documents and call logs and so forth, but there was
17 no deposition of the other plaintiffs.

18 THE COURT: It strikes me that this number is high,
19 though. I would be more comfortable with Sundin getting an
20 award of 4,000 and each of the other two 2,000.

21 MS. TERRELL: That's fine, your Honor.

22 MS. MILLER: That's fine, your Honor.

23 THE COURT: With respect to the fees and costs, I
24 think that what is sought here is reasonable, and I measure
25 that reasonableness in a couple dimensions. One of them is

1 with respect to what was presented as the lodestar figure,
2 that the amount sought of \$105,000 is almost a third of the
3 lodestar fees plus costs, so that's a substantial discount
4 over the investment of time that plaintiffs' counsel put into
5 the case.

6 And I know that they did put a lot of time into the
7 case. There was a lot of discovery in the case. The
8 settlement talks were lengthy, complex, and required people to
9 really engage in a lot of thought and activity about how best
10 to manage a case that in a way turned out a little differently
11 than they may have anticipated at the front end, and I think
12 that we should applaud attorneys on both sides who don't get
13 locked into one vision of the case but are able to adapt as
14 the case evolves.

15 I think it's reasonable in another dimension that in
16 looking at the benefit to the class, and in injunctive relief
17 cases, it's hard because we can't do an arithmetic
18 calculation, the class got X dollars, the attorneys get Y
19 dollars, is that, you know, reasonable, here the class is not
20 getting any money, but, you know, Section 2.6 of the
21 settlement agreement also provides, as would be appropriate in
22 a (b)(2) class, that they are not waiving any monetary claims.

23 So anybody who thinks that there is a pot of gold
24 sitting with the defendant certainly would have the right to
25 pursue that individually or as a class.

1 But there is a benefit to the class from the
2 injunctive relief or the agreed procedure, and there is a
3 benefit to the class -- put a different way. This amount is
4 reasonable when laid next to the amount that the defendant
5 will spend to do these things.

6 So those all are persuasive evidence that this is a
7 fair and reasonable amount of fees and costs and that, you
8 know, there isn't any collusion here. Even though there is a
9 clear sailing provision, which increasingly in our circuit is
10 looked upon with some arched eyebrow, but certainly there is
11 no situation where that's teamed with a reverter, where you
12 would have even more concern.

13 So for those reasons, I do think the amount of fees
14 and costs are reasonable, and I would approve that
15 preliminarily.

16 With respect to a couple of the other considerations
17 that go into whether a settlement is to be given preliminary
18 approval as fair and reasonable, we've already talked about
19 the benefit to the class. You know, measured against the risk
20 of going forward, it would strike me as very difficult in a
21 (b)(2) setting if the class established everything to do a lot
22 better than these kinds of procedures. These procedures do
23 seem to me very robust and very significant in terms of the
24 kinds of things that you would ask a court to look at if there
25 was a plaintiff's verdict in a (b)(2) setting.

1 In terms of letting go of the (b) (3) claim, obviously
2 from the plaintiffs' side, the potential number of class
3 members is huge. I think I saw the number 45 million.

4 MS. TERRELL: 45 million, yeah.

5 THE COURT: And that, as I said, I am curious about
6 the insurance, but unless they had the most gold-plated
7 insurance of all time, that probably wouldn't have been enough
8 to provide anything meaningful even if there was success.

9 But there's also in this case, as in many of these
10 types of cases, significant barriers to ultimate success at
11 trial, issues of whether there would be a class certified
12 because of individualized and consent issues, among one of
13 many types of obstacles that would have to be surmounted, and
14 then in this case, if it was, the likelihood that that would
15 net any kind of monetary relief that would be measurable was
16 highly in doubt.

17 So for those reasons, I think that weighs in favor of
18 approval of the settlement. Obviously, there was a lot of
19 work done in the case, so the settlement came at a stage in
20 the proceeding where the lawyers and the parties knew enough
21 to make reasonable judgments about what would be a fair and
22 reasonable settlement.

23 The settlement came at a time when there was still a
24 lot of work to do, class certification and many other things
25 after that, so this came at a time that would certainly

1 conserve resources but also provide relief at an earlier stage
2 than could be achieved if you went the distance and went
3 through class certification and potential summary judgment
4 practice and trial, which could take quite an extended period
5 of time.

6 And as I've said, I don't find anything to be
7 collusive about the negotiations or the fee amount.

8 So those factors lead me to conclude that the
9 settlement should be given preliminary approval as fair,
10 reasonable and adequate. As I say, I'm happy to do that now
11 but get the information concerning the insurance so that we
12 have that to the extent it would bear on final approval.

13 MS. TERRELL: All right. Thank you, your Honor.

14 MS. MILLER: And, your Honor, just -- I apologize I
15 wasn't here for the beginning part of this, but to the extent
16 this sheds any light, my firm did provide notice to the
17 insurance carrier separate and apart --

18 THE COURT: Okay.

19 MS. MILLER: -- and we did receive a rejection
20 letter, and we're happy to tender that to the Court.

21 And with respect to the amount of the insurance
22 coverage, there was actually a limitation on the amount that
23 would be covered for class actions.

24 THE COURT: Okay.

25 MS. MILLER: It limited it to -- I think it was in

1 the six figures. So --

2 THE COURT: Okay. I think it would be good to file
3 that --

4 MS. MILLER: Sure.

5 THE COURT: -- and you can -- with an affidavit --

6 MS. MILLER: Sure.

7 THE COURT: -- and then that can be part of the record
8 concerning the settlement, okay?

9 MS. MILLER: Sure.

10 THE COURT: That leaves us with the notice issue, and
11 obviously this being a (b)(2) class, there is not a
12 requirement of any notice be given at all, particularly --
13 well, at least in a case where there isn't any kind of
14 monetary relief that's attached, as there isn't here. Seventh
15 Circuit case, *Johnson versus Meriter Health Services*, 702 F.3d
16 364, a 2012 decision, makes that clear.

17 So the method that you have of giving notice I think
18 is creative. At least in my experience, I haven't seen that
19 before. I guess a question that I have is that when you
20 provide this to the legal aid societies and state attorney
21 generals, what is it that you expect them or you will ask them
22 to do with it?

23 MS. TERRELL: Simply to make consumers aware of the
24 fact that there are -- if they are receiving calls, those
25 calls should stop, and that if they're continuing to get

1 calls, that they should report it because there is an order in
2 place that says they're not supposed to.

3 THE COURT: Have you done this before, this kind of
4 notice?

5 MS. TERRELL: We actually did recently in a case in
6 Soffit versus I think it was Enhanced Recovery Solutions, and
7 we provided the same type of notice that is being used here.

8 THE COURT: Have you been in contact with legal aid
9 societies, state attorney generals so that you have an idea
10 what they do with it? I mean, do they post it in their
11 office? Do they just consult people?

12 I'm just kind of curious about what happens when you
13 send it to entities who I would understand why they might deal
14 with people who could have an interest.

15 MS. TERRELL: The idea is that would be posted in a
16 place that consumers would be able to see it, a lobby or some
17 kind of bulletin board.

18 THE COURT: And they're agreeable to doing this in
19 your experience?

20 MS. TERRELL: Yes. They did in the other case, and
21 we can confirm here with cover letter, but, yeah.

22 THE COURT: All right. And I tend to agree that
23 notice in this kind of situation by this means is probably a
24 little more directed than if you just have in a mass
25 publication newspaper.

1 MS. TERRELL: Sure.

2 THE COURT: I do have a couple questions about the
3 substance of the notice, and my guess is that you had an
4 interest in trying to keep it within one page for posting
5 purposes, but I think that it is useful to add in a few
6 things.

7 MS. TERRELL: Okay.

8 THE COURT: One is that to make it clear to them, it
9 pertains to the bullet point about they retaining their
10 rights.

11 MS. TERRELL: Yes.

12 THE COURT: I think that they have a right to know
13 that the three plaintiffs are getting some money.

14 MS. TERRELL: Okay.

15 THE COURT: I think they have a right to know what
16 the plaintiffs' fees are. And while they do not get monetary
17 relief, then you have -- you retain a right to seek it if you
18 wish to do so, and you may want to add in that it's been on
19 this basis because, you know, thorough investigation
20 determined that the defendant lacked the resources to provide
21 any meaningful, you know, financial relief.

22 It may be a useful thing to put in there in terms of
23 them knowing they have a right to sue, but is there going to
24 be any efficacy.

25 MS. TERRELL: All right.

1 THE COURT: All right? So does anybody have any
2 problem with those additions?

3 MS. TERRELL: No, your Honor.

4 MS. MILLER: No.

5 MR. HUTNICK: No, your Honor.

6 THE COURT: Okay. Then with those changes, I would
7 approve the notice as compliant with the requirements of due
8 process.

9 MS. TERRELL: Would you like us to resubmit the
10 notice?

11 THE COURT: That would be good. You know, if you can
12 keep it on a page, then -- where people actually who have
13 vision like mine could see it, that would be good.

14 MS. TERRELL: Okay.

15 THE COURT: All right? Okay. So you have tendered a
16 proposed preliminary approval order.

17 MS. TERRELL: And we can resubmit that through the
18 agreed --

19 THE COURT: Why don't you do it to the agreed order
20 box. We do need to fill in some dates, and what I would like
21 to do is on the portions where you have 90 days or five days
22 or things like that, I think it's much better to put dates on
23 the calendar.

24 MS. TERRELL: Absolutely, your Honor. Those are just
25 place holders to give you a sense of the sort of timing.

1 MS. MILLER: Timing.

2 MS. TERRELL: Yeah.

3 THE COURT: And those dates seem fine to me.

4 MS. TERRELL: Okay.

5 THE COURT: So in terms of a final approval hearing,
6 what would you propose?

7 MS. TERRELL: So we're looking at 180 -- are we in
8 December? Is that where we are?

9 MS. MILLER: Yes.

10 THE COURT: So let's assume I'm going to enter --
11 you'll submit to me later today a preliminary approval order
12 but I don't get it entered until Monday.

13 MS. TERRELL: Okay. We'll just give you a schedule
14 based on that, your Honor, does that make sense? But you want
15 to set it --

16 THE COURT: I'd like to give you the dates just so
17 that I don't want you to put a date in there that for some
18 reason I'm not available.

19 MS. TERRELL: That's four months, that's five months,
20 five-and-a-half months.

21 MS. MILLER: Five-and-a-half months.

22 MS. TERRELL: Is it five-and-a-half months? 120.

23 MR. HUTNICK: Five-and-a-half would be --

24 MS. TERRELL: Five-and-a-half months. Maybe
25 beginning of October?

1 MS. MILLER: Yeah, does that look right, Ben? You
2 probably have a calendar in front of you.

3 MR. HUTNICK: Yeah, that looks right to me.

4 THE COURT: Okay. Then why don't we set a date for
5 the final approval hearing of, Jenny, what do we look like the
6 week of October 10th?

7 THE CLERK: You don't have anything scheduled on
8 Tuesday.

9 THE COURT: Okay.

10 THE CLERK: Monday also.

11 THE COURT: Okay. Why don't we say 11:00 a.m. on
12 Monday, October 10th, and then what you can do is use that
13 date and track backwards to put into the order the appropriate
14 dates.

15 MS. TERRELL: And into the notice.

16 THE COURT: Exactly.

17 MS. TERRELL: Okay.

18 THE COURT: Okay?

19 MS. TERRELL: Okay.

20 THE COURT: All right. Anything else today?

21 MS. TERRELL: No, your Honor.

22 THE COURT: All right. Thanks very much.

23 Thanks for your hard work. I know that this was one
24 that took a lot of effort. And, you know, it's easy when you
25 hit obstacles to say, gee, I'm going to throw up my hands and

1 not accomplish something, but you guys didn't do that, so I
2 applaud you for that.

3 Thank you very much.

4 MS. TERRELL: Thank you, your Honor.

5 MS. MILLER: Thank you.

6 MR. HUTNICK: Thank you, your Honor. Thanks,
7 everyone.

8 (Which were all the proceedings heard.)

9 CERTIFICATE

10 I certify that the foregoing is a correct transcript from
11 the digital recording of proceedings in the above-entitled
12 matter to the best of my ability, given the limitations of
13 using a digital-recording system.

14

15 /s/Kathleen M. Fennell

May 16, 2016

16

17 Kathleen M. Fennell
Official Court Reporter

18 Date

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